



**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**
312 North Spring Street, Room G-8
Los Angeles, CA 90012
Tel: (213) 894-3535

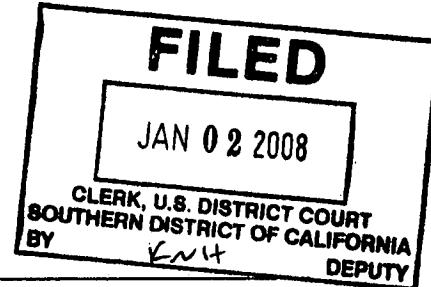
SHERRI R. CARTER
District Court Executive and
Clerk of Court

December 27, 2007

Clerk, US District Court, Southern District of California
Mr. Sam Hamrick, Clerk
Edward J. Schwartz United States Courthouse, Ste 4290
940 Front Street
San Diego, CA 92101

Re: Transfer of our Civil Case No. CV 07-7814 RGK (MAN)

Case Title: USA v. JOSE ESTEBAN DOMINGO MARTINEZ



Dear Sir/Madam:

'08 CV 0005 LAB

An order having been made transferring the above-numbered case to your district, we are transmitting herewith our entire original file in the action, together with certified copies of the order and the docket. Please acknowledge receipt of same and indicate below the case number you have assigned to this matter on the enclosed copy of this letter and return it to our office. Thank you for your cooperation.

Very truly yours,

Clerk, U.S. District Court

M. Guerrero
By MADELINA GUERRERO
Deputy Clerk

cc: All counsel of record

TO BE COMPLETED BY RECEIVING DISTRICT

Receipt is acknowledged of the documents described herein and we have assigned this matter case number CV: _____

Clerk, U.S. District Court

By _____
Deputy Clerk

I hereby attest and certify on, 12-27-07
that the foregoing document is a full, true
and correct copy of the original on file in
my office, and in my legal custody.

CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

M. Guerrero

DEPUTY CLERK



1095

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,) NO. CV 07-7814-RGK (MAN)
Plaintiff,) [S.D. Cal. 04-CR-1670-LAB]
v.) ORDER TRANSFERRING CASE TO
JOSE ESTEBAN DOMINGO MARTINEZ,) THE SOUTHERN DISTRICT OF
Defendant.) CALIFORNIA

Jose Esteban Domingo-Martinez, who is in federal custody, filed a "Motion To Vacate, Set Aside Or Correct Sentence By A Person In Federal Custody [28 U.S.C. § 2255]" on November 30, 2007 ("Motion"). The Clerk's Office crossed-out the Motion's reference to 28 U.S.C. § 2255 and, instead, designated the Motion as a habeas petition brought pursuant to 28 U.S.C. § 2241. Having reviewed the pertinent files and records in this matter, the Court finds that, in the interest of justice, this case should be transferred to the United States District Court for the Southern District of California.

Domingo-Martinez alleges that he is a federal prisoner serving a sentence imposed on January 6, 2007, by the United States District Court

1 for the Southern District of California in Case No. "04CR1670-LAB."
 2 (Motion at 1-2.) He attacks the conviction he sustained and the
 3 sentence imposed on him by the Southern District in that case. (Motion
 4 at 5.) A review of the Southern District's docket for Case No. 04-CR-
 5 1670-LAB¹ reveals that, on January 16, 2007, United States District Judge
 6 Larry Alan Burns held a hearing at which Domingo-Martinez admitted
 7 certain allegations, and District Judge Burns then ordered Domingo-
 8 Martinez's previously-ordered supervised release revoked. On January
 9 22, 2007, Judgment issued in Case No. 04-CR-1670-LAB, revoking Domingo-
 10 Martinez's supervised release and sentencing him to 12 months, to run
 11 consecutively to another conviction sustained by Domingo-Martinez in the
 12 Southern District (Case No. 06-CR-2527-GT).

13

14 A Section 2255 motion is the "appropriate vehicle for challenging
 15 a [federal] conviction." Tripati v. Henman, 843 F.2d 1160, 1162 (9th
 16 Cir. 1987). "In general, § 2255 provides the exclusive procedural
 17 mechanism by which a federal prisoner may test the legality of
 18 detention." Lorentsen v. Hood, 223 F.2d 950, 953 (9th Cir. 2000). It
 19 is well-established that a federal prisoner may not substitute a Section
 20 2241 habeas petition for a Section 2255 motion. See, e.g., United
 21 States v. Pirro, 104 F.3d 297, 299 (9th Cir. 1997).

22

23 Domingo-Martinez did not himself couch the instant Motion as one
 24 raised under Section 2241; that characterization was supplied by the
 25 Clerk's Office of this Court upon the filing of the Motion. Based on
 26 the Court's review, it appears that Domingo-Martinez's intent was to

27 ¹ Pursuant to Rule 201 of the Federal Rules of Evidence, the
 28 Court takes judicial notice of this court docket.

1 raise his present claims by way of a Section 2255 motion, not a Section
2 2241 habeas petition. However, he has sought Section 2255 relief in the
3 wrong court. A Section 2255 motion must be brought in the court in
4 which the defendant was convicted and sentenced -- the Southern District
5 of California. See, e.g., Hernandez v. Campbell, 204 F.3d 861, 864-65
6 (9th Cir. 2000). The Southern District is the only appropriate forum
7 for determining the Motion.

8

9 "Under a provision of the Federal Courts Improvement Act, 28 U.S.C.
10 § 1631, if a court finds that there is a want of jurisdiction the court
11 shall transfer the action to any other such court in which the action
12 could have been brought if it is in the interest of justice." Miller v.
13 Hambrick, 905 F.2d 259, 262 (9th Cir. 1990) (internal quotation omitted).
14 It is plain that the Motion should have been brought in the Southern
15 District of California but, instead, was mistakenly submitted by
16 Domingo-Martinez to this District. The Court concludes that it is in
17 the interest of justice to simply order transfer of the Motion to the
18 Southern District, rather than to order its dismissal and refiling in
19 that District. *Id.*

20

21 Accordingly, IT IS ORDERED that the Clerk of the Court shall
22 transfer this case to the United States District Court for the Southern
23 District of California.

24 ///

25 ///

26 ///

27 ///

28 ///

1 IT IS FURTHER ORDERED that the Clerk serve a copy of this Order on
2 Domingo-Martinez.

3

4 IT IS SO ORDERED.

5

6 DATED: 12-18-07.

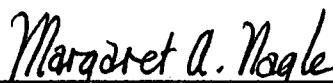
7

8 
R. GARY KLAUSNER

9 UNITED STATES DISTRICT JUDGE

10

11 PRESENTED BY:

12 
13 MARGARET A. NAGLE
14 UNITED STATES MAGISTRATE JUDGE

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194, CLOSED, TRANSFERRED

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
 (Western Division - Los Angeles)
 CIVIL DOCKET FOR CASE #: 2:07-cv-07814-RGK-MAN**

Jose Esteban Domingo-Martinez v. United States of America Date Filed: 11/30/2007
 Assigned to: Judge R. Gary Klausner Date Terminated: 12/18/2007
 Referred to: Magistrate Judge Margaret A. Nagle Jury Demand: None
 Cause: 28:2241 Petition for Writ of Habeas Corpus (federal) Nature of Suit: 530 Habeas Corpus (General)
 Jurisdiction: Federal Question

Petitioner**Jose Esteban Domingo-Martinez**

represented by **Jose Esteban Domingo-Martinez**
 REG 91883-198
 LOMPOC
 U.S. PENITENTIARY
 Inmate Mail/Parcels
 3901 KLEIN BLVD
 LOMPOC, CA 93436
 PRO SE

V.

Respondent**United States of America**

represented by **Assistant 2241-2255 US Attorney LA-CR**

AUSA - Office of US Attorney
 Criminal Div - US Courthouse
 312 North Spring Street
 Los Angeles, CA 90012-4700
 213-894-2434
 Email: USACAC.Criminal@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

I hereby attest and certify on 12-27-07
 that the foregoing document is a full, true
 and correct copy of the original on file in
 my office, and in my legal custody.

CLERK U.S. DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

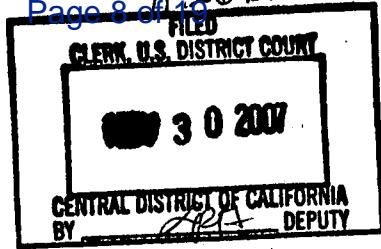
M Guererro
 DEPUTY CLERK



Date Filed	#	Docket Text
11/30/2007	1	PETITION for Writ of Habeas Corpus by a Person In Federal Custody (28:2241) Case assigned to Judge R. Gary Klausner and referred to Magistrate Judge Margaret A. Nagle. (Filing fee \$ 5 DUE.), filed by Petitioner Jose Esteban Domingo-Martinez. (et) (Entered: 12/06/2007)
11/30/2007	2	NOTICE OF REFERENCE TO A U.S. MAGISTRATE JUDGE. Pursuant to the provisions of the Local Rules, the within action has been

		assigned to the calendar of Judge R. Gary Klausner and referred to Magistrate Judge Margaret A. Nagle to consider preliminary matters and conduct all further matters as appropriate. The Court must be notified within 15 days of any change of address. (et) (Entered: 12/06/2007)
12/18/2007	3	ORDER by Judge R. Gary Klausner transferring case to USDC Southern District of California. Original file, certified copy of the transfer order and docket sheet sent. (Made JS-6. Case Terminated.) (mg) (Entered: 12/27/2007)
12/27/2007		TRANSMITTAL of documents: Original case file, certified copy of Order of Transfer, of docket sheet, and Form CV 22 sent to US District Court, Southern District of CA. (mg) (Entered: 12/27/2007)

PACER Service Center			
Transaction Receipt			
12/27/2007 12:25:43			
PACER Login:	us3877	Client Code:	
Description:	Docket Report	Search Criteria:	2:07-cv-07814-RGK-MAN
Billable Pages:	2	Cost:	0.16



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES V. JOSE ESTEBAN DOMINGO MARTINEZ	PLAINTIFF(S) DEFENDANT(S)	CASE NUMBER CV07- 7814 RGK (MAN) NOTICE OF REFERENCE TO A UNITED STATES MAGISTRATE JUDGE (Petition for Writ of Habeas Corpus)
----------------------------------------------------------------------------	------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Pursuant to General Order 07-02, the within action has been assigned to the calendar of the Honorable R. Gary Klausner, U.S. District Judge. Pursuant to General Order 05-07, the within action is referred to U.S. Magistrate Judge Margaret A. Nagle, who is authorized to consider preliminary matters and conduct all further hearings as may be appropriate or necessary. Thereafter, unless the Magistrate Judge determines that an evidentiary hearing is required, the Magistrate Judge shall prepare a report and recommendation and file it with the Clerk of the Court which may include proposed findings of fact and conclusions of law where necessary or appropriate, and may include a proposed written order or judgment, which shall be mailed to the parties for objections.

Pleadings and all other matters to be called to the Magistrate Judge's attention shall be formally submitted through the Clerk of the Court.

The Court must be notified within fifteen (15) days of any address change. If mail directed by the clerk to your address of record is returned undelivered by the Post Office, and if the Court and opposing counsel are not notified in writing within fifteen (15) days thereafter of your current address, the Court may dismiss the petition with or without prejudice for want of prosecution.

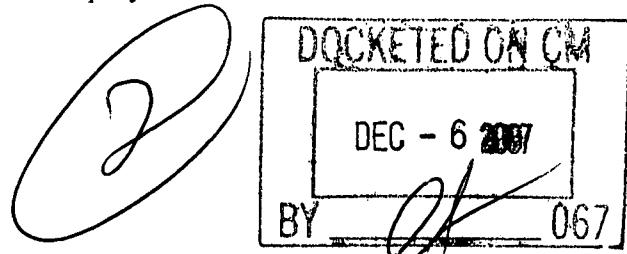
Clerk, U.S. District Court

December 4, 2007

Date

By LRAYFORD

Deputy Clerk





SHERRI R. CARTER
District Court Executive
and Clerk of Court

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION
312 North Spring Street, Room G-8 Los
Angeles, CA 90012
Tel: (213) 894-3535

SOUTHERN DIVISION
411 West Fourth Street, Suite 1053
Santa Ana, CA 92701-4516
(714) 338-4570

EASTERN DIVISION
3470 Twelfth Street, Room 134
Riverside, CA 92501
(951) 328-4450

JOSE ESTEBAN DOMINGO-MARTINEZ
91883-198
3910 KLEIN BLVD
LOMPOC, CA 93436

Tuesday, December 04, 2007

Dear Sir/Madam:

Your petition has been filed and assigned civil case number **CV07- 7814 RGK (MAN)**

Upon the submission of your petition, it was noted that the following discrepancies exist:

- 1. You did not pay the appropriate filing fee of \$5.00. Submit a cashier's check, certified bank check, business or corporate check, government issued check, or money order drawn on a major American bank or the United States Postal Service payable to 'Clerk U.S. District Court'. If you are unable to pay the entire filing fee at this time, you must sign and complete this court's Prisoner's Declaration In Support of Request to Proceed In Forma Pauperis in its entirety. The Clerk's Office will also accept credit cards (Mastercard, Visa, Discover, American Express) for filing fees and miscellaneous fees. Credit card payments may be made at all payment windows where receipts are issued.
- 2. The Declaration in Support of Request to Proceed in Forma Pauperis is insufficient because:
 - (a) You did not sign your Declaration in Support of Request to Proceed in Forma Pauperis.
 - (b) Your Declaration in Support of Request to Proceed in Forma Pauperis was not completed in its entirety.
 - (c) You did not submit a Certificate of Prisoner's Funds completed and signed by an authorized officer at the prison.
 - (d) You did not use the correct form. You must submit this court's current Declaration in Support of Request to Proceed in Forma Pauperis.
 - (e) Other: _____

Enclosed you will find this court's current Prisoner's Declaration in Support of Request to Proceed in Forma Pauperis, which includes a Certificate of Funds in Prisoner's Account Form.

Sincerely,
Clerk, U.S. District Court
RAYFORD
By: _____
Deputy Clerk



SHERRI R. CARTER

District Court Executive
and Clerk of Court

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION
312 North Spring Street, Room G-8 Los Angeles, CA 90012
Tel: (213) 894-7984

SOUTHERN DIVISION
411 West Fourth Street, Suite 1053
Santa Ana, CA 92701-4516
(714) 338-4570

EASTERN DIVISION
3470 Twelfth Street, Room 134
Riverside, CA 92501
(951) 328-4450

Tuesday, December 04, 2007

JOSE ESTEBAN DOMINGO-MARTINEZ
91883-198
3910 KLEIN BLVD
LOMPOC, CA 93436

Dear Sir/Madam:

A Petition for Writ of Habeas Corpus was filed today on your behalf and assigned civil case number CV07- 7814 RGK (MAN)

A Motion pursuant to Title 28, United States Code, Section 2255, was filed today in criminal case number _____ and also assigned the civil case number _____

Please refer to these case numbers in all future communications.

Please Address all correspondence to the attention of the Courtroom Deputy for:

District Court Judge _____

Magistrate Judge Margaret A. Nagle

at the following address:

U.S. District Court
312 N. Spring Street
Civil Section, Room G-8
Los Angeles, CA 90012

Ronald Reagan Federal Building and U.S. Courthouse
411 West Fourth St., Suite 1053
Santa Ana, CA 92701-4516
(714) 338-4750

U.S. District Court
3470 Twelfth Street
Room 134
Riverside, CA 92501

The Court must be notified within fifteen (15) days of any address change. If mail directed to your address of record is returned undelivered by the Post Office, and if the Court and opposing counsel are not notified in writing within fifteen (15) days thereafter of your current address, the Court may dismiss the case with or without prejudice for want of prosecution.

Very truly yours,

Clerk, U.S. District Court

By: LRAYFORD
Deputy Clerk

Domingo-Martinez, Jose Esteban

NAME

#91883-198

PRISON IDENTIFICATION / BOOKING NUMBER

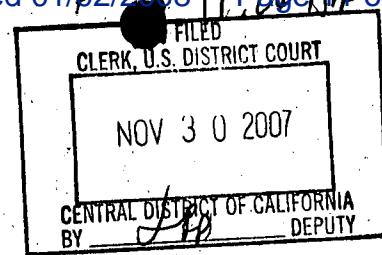
3910 Klein Blvd. Lompoc, CA 93436

ADDRESS OR PLACE OF CONFINEMENT

U.S. Penitentiary

NOTE: It is your responsibility to notify the Clerk of Court in writing of any change of address.

NOTE: If represented by an attorney; his name, address and telephone number.



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

CASE NUMBER:

CV- 07-7814 RGK (cont)
To be supplied by the Clerk of the United States District Court.

CR- 04CR1670-LAB

Criminal case under which sentence was imposed.

Jose Esteban Domingo-MartinezFULL NAME OF MOVANT
(Include name under which you were convicted)

Petitioner

**MOTION TO VACATE, SET ASIDE OR
CORRECT SENTENCE BY A PERSON IN
FEDERAL CUSTODY**

28 U.S.C. § 2255

INSTRUCTIONS AND INFORMATION - READ CAREFULLY

This motion must be legibly handwritten or typewritten and signed by the movant under penalty of perjury. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury. All questions must be answered concisely in the proper space on the form. Where more room is needed to answer any question use reverse side of sheet.

Additional pages are not permitted. No citation or authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.

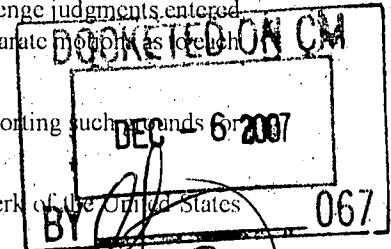
Upon receipt, your motion will be filed if it is in proper order. **NO FEE** is required with this motion.

If you do not have the necessary funds for transcripts, counsel, appeal, and other costs connected with a motion of this type, you may request permission to proceed in forma pauperis, in which event you must execute the declaration on the last page, setting forth information establishing your inability to pay costs. If you wish to proceed in forma pauperis, you must have an authorized officer at the penal institution complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.

Only judgments entered by one court may be challenged in a single motion. If you seek to challenge judgments entered by different judges or divisions either in the same district or in different districts, you must file separate motions as to each judgment.

Your attention is directed to the fact that you must include all grounds for relief and all facts supporting such grounds for relief in the motion you file seeking relief from any judgment of conviction.

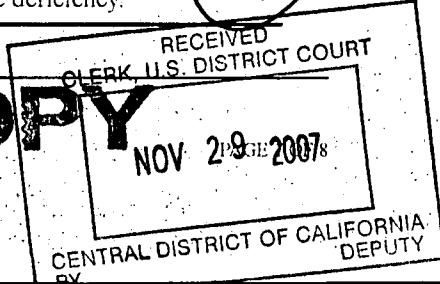
When the motion is fully completed, the original and three (3) copies must be mailed to the Clerk of the United States District Court, whose address is 312 North Spring Street, Los Angeles, California 90012.



ATTENTION: Intake/Docket Section

Motions which do not conform to these instructions will be returned with a notation as to the deficiency.

CV-67 (2/98)

MOTION
28 U.S.C. § 2255**COPY**

MOTION

1. Name and location of court which entered judgment of conviction under attack:
United States District Court
Southern District of California
2. Date of judgment of conviction: **January 16, 2007**
3. Length of sentence: **12 months** Sentencing judge: **Hon. Larry Alan Burns**
4. Nature of offense or offenses for which you were convicted:
Violation of Supervised Release
Illegal entry into the United States

5. What was your plea? (check one)

Not guilty
 Guilty
 Nolo Contendere

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

6. Kind of trial: *(check one)*

Jury
 Judge only

7. Did you testify at the trial?

Yes No

8. Did you appeal from the judgment of conviction?

Yes No

9. If you did appeal, answer the following:

- (a) Name of court: _____
- (b) Result: _____

- (c) Date of result: _____

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any federal court?

Yes No

11. If your answer to 10 was "yes", give the following information:

- (a) (1) Name of court: _____
- (2) Nature of proceeding: _____

- (3) Grounds raised: _____

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes No

- (5) Result: _____

- (6) Date of result: _____

- (b) (1) Name of court: _____
- (2) Nature of proceeding: _____

- (3) Grounds raised: _____

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes No

- (5) Result: _____

- (6) Date of result: _____

- (c) (1) Name of court: _____
- (2) Nature of proceeding: _____

- (3) Grounds raised: _____

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes No

(5) Result: _____

(6) Date of result: _____

(d) Did you appeal, to an appellate federal court having jurisdiction, the results of action taken on any petition, application or motion?

(1) First petition, etc. Yes No

(2) Second petition, etc. Yes No

(3) Third petition, etc. Yes No

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not: _____

12. State concisely every ground on which you claim that you are being held unlawfully.

CAUTION: If you fail to set forth all grounds in this motion, you may be barred from presenting additional grounds at a later date. For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded letter constitutes a separate ground for possible relief. You may raise any grounds which you have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

If you selected one or more of these grounds for relief, you must allege facts in support of the grounds listed below. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: Ineffective assistance of counsel.

Supporting facts (tell your story briefly without citing cases or law): During legal battle, in one of many conversations with my lawyer, he advised mr to plead guilty, assuring me that the time that I will get for my new case, will be run concurrently with the time for the violation of my supervised release, since I was not given the proper information at the time of conviction on my first case.

B. Ground two: Uncostitutional Revocation of Supervised Release.

Supporting facts (tell your story briefly without citing cases or law): According to my recollection and copies of my first case in August 23, 2004, at that time of my conviction, the paperwork related to what constitutes a violation of a supervised release o probation was not properly given to me, I have copies attached to that conviction where nothing is specific, like on my last case where all related paperwork is specific.

C. Ground three:

Denial of Argumentative Petition

Supporting facts (tell your story briefly without citing cases or law): The argument to the Judge, about the circumstances (lack of information) and the lenght of time of the revocation before the sentencing, was never brought up to the Judge, even when according to counsel, that argument would have had proved to be positive and helpful as in other cases similar to mine, where the Court desicion clearly differs as in this case.

D. Ground four:

Supporting facts (tell your story briefly without citing cases or law):

13. If any of the grounds listed in 12 A, B, C and D were not previously presented, state briefly what grounds were not presented, and give your reasons for not presenting them: all of them.

This is my first motion submitted to the Court
after my sentencing.

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?

Yes No

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attached herein:

(a) At preliminary hearing: _____

(b) At arraignment and plea: **Steven L. Barth**
Federal Defenders Inc.

(c) At trial: _____

(d) At sentencing: **Steven L. Barth**
Federal Defenders Inc.

(e) On appeal: _____

(f) In any post-conviction proceeding: _____

(g) On appeal from any adverse ruling in a post-conviction proceeding: _____

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court at approximately the same time?

Yes No

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes No

(a) If so, give the name and location of court which imposed sentence to be served in the future: _____

(b) Give the date and length of sentence to be served in the future: _____

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed sentence to be served in the future?

Yes No

WHEREFORE, movant prays that the court grant him all relief to which he may be entitled in this proceeding.

[Signature] *Signature of Attorney (if any)*

I declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct. Executed on

11-16-07

Date

Domingo M

Signature of Movant

MOTION
 28 U.S.C. § 2255

COPY

Jose Esteban Domingo-Martinez

(Petitioner)

United States of America

(Plaintiff)

DECLARATION IN SUPPORT OF REQUEST
TO PROCEED IN FORMA PAUPERISI, Domingo-Martinez Jose Esteban,

declare that I am the petitioner in the above-entitled case; that in support of my motion to proceed without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to relief.

1. Are you presently employed?

Yes No

(a) If the answer is "yes", state the amount of your salary or wages per month, and give the name and address of your employer. around \$69.00 to \$70.00 Dlls. per month.

(b) If the answer is "no", state the date of last employment and the amount of the salary and wages per month which you received. _____

2. Have you received, within the past twelve (12) months, any money from the following sources:

(a) Business, profession or form of self-employment? Yes No

(b) Rent payments, interest or dividends? Yes No

(c) Pensions, annuities or life insurance payments? Yes No

(d) Gifts or inheritances? Yes No

(e) Any other source? Yes No

If the answer to any of the above is "yes", describe each source of money and state the amount received from each during the past twelve (12) months: _____

3. Do you own any cash, or do you have money in a checking or savings account?

(Include any funds in prison accounts)

Yes No

If the answer is "yes", state the total value of the items owned: _____

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property?

(Exclude ordinary household furnishings and clothing)

Yes No

If the answer is "yes", describe the property and state its approximate value: _____

5. List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support.

I declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct. Executed on
November 16, 2007

Date

Domingo m

: Signature of Petitioner

CERTIFICATE

I hereby certify that the Petitioner herein has the sum of \$ 617.05 Last 6 months on account to his credit at the
USP Lompoc institution where he is confined. I further certify that Petitioner likewise has the following securities to his credit according to the records of said institution:

Current acct. = \$27.70/100.

Dated: 11/16/2007


Maria
Authorized Officer of Institution

~~Authorized Officer of Institution~~

Correctional Counselor

Title of Officer

COPY

MOTION
28 U.S.C. § 2255

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

(a) PLAINTIFFS

Domingo-Martinez

USA

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF
(EXCEPT IN U.S. PLAINTIFF CASES)COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

REG 91883-198
LOMPOC U.S. PENITENTIARY
Inmate Mail/Parcels
3901 Klein BLVD., Lompoc, CA 93436

ATTORNEYS (IF KNOWN)

08 CV 0005 LAB

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

<input type="checkbox"/> 1 U.S. Government Plaintiff	<input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)
<input checked="" type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT
(For Diversity Cases Only))

PT	DEF	PT	DEF
<input type="checkbox"/> 1 Citizen of This State	<input type="checkbox"/> 1 Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
<input type="checkbox"/> 2 Citizen of Another State	<input type="checkbox"/> 2 Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
<input type="checkbox"/> 3 Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

28:2241 Petition for Writ of Habeas Corpus (federal)

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reappointment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury-Medical Malpractice	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	PROPERTY RIGHTS	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commerce/ICC Rates/etc.
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 830 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	SOCIAL SECURITY	<input type="checkbox"/> K10 Selective Service
<input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> K61 HIA (13958)	<input type="checkbox"/> K10 Securities/Commodities Exchange
<input type="checkbox"/> 160 Stockholders Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability		<input type="checkbox"/> K62 Black Lung (923)	<input type="checkbox"/> K75 Customer Challenge 12 USC
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury		<input type="checkbox"/> K63 DIWC/DIW (405(g))	<input type="checkbox"/> K91 Agricultural Acts
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> K64 SSID Title XVI	<input type="checkbox"/> K92 Economic Stabilization Act
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	FEDERAL TAX SUITS	<input type="checkbox"/> K65 RSI (405(g))
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input checked="" type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus	<input type="checkbox"/> K70 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> K93 Environmental Matters
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 530 General	<input type="checkbox"/> K71 IRS - Third Party 26 USC 7609	<input type="checkbox"/> K94 Energy Allocation Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 535 Death Penalty		<input type="checkbox"/> K95 Freedom of Information Act
<input type="checkbox"/> 240 Tort to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 540 Mandamus & Other		<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 550 Civil Rights		<input type="checkbox"/> 950 Constitutionality of State
<input type="checkbox"/> 290 All Other Real Property		<input type="checkbox"/> 555 Prisoner Conditions		<input type="checkbox"/> 990 Other Statutory Actions

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

1 Original Proceeding 2 Removal from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) **Central, CA** 6 Multidistrict Litigation 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

 CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23

DEMAND \$

Check YES only if demanded in complaint:

JURY DEMAND: YES NOVIII. RELATED CASE(S) IF ANY (See Instructions): **JUDGE**

Docket Number

DATE

1/2/08

SIGNATURE OF ATTORNEY OF RECORD